

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

STEPHEN and LISA COCKING

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/30/2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

STEPHEN and LISA COCKING

:

CIVIL ACTION

v.

:

NO.

NCO FINANCIAL SYSTEMS, INC.

:

:

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

04/30/2013
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiffs, Lisa & Stephen Cocking
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 921 Olaf Street, Big Rapids, MI 49307

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 04/30/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 04/30/2013

Attorney-at-Law

57100

Attorney I.D.#

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has its principal office in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. Plaintiffs are natural persons residing in Big Rapids, Michigan 49307.

6. Plaintiff Stephen Cocking (hereinafter “Mr. Cocking”) is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7. Plaintiff Lisa Cocking (hereinafter “Mrs. Cocking”) is a person granted a cause of action under the FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

1 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
2 1692a(6), and repeatedly contacted Plaintiffs in an attempt to collect a debt.

3
4 10. Defendant acted through its agents, employees, officers, members,
5 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
6 representatives, and insurers.

7
8
9 **FACTUAL ALLEGATIONS**

10 10. At all relevant times, Defendant was attempting to collect an alleged
11 consumer debt and contacted Plaintiffs to collect that debt.

12 11. The alleged debt, a Credit One Bank, N.A. credit account, arose out of
13 transactions, which were primarily for personal, family, or household purposes.

14
15 12. As Plaintiffs have no business debt, the debt sought by Defendant
16 could have only been personal in nature.

17 13. Beginning in March 2013, and continuing through August 6, 2013,
18 Defendant repeatedly and continuously contacted Plaintiffs on their home
19 telephone in an attempt to collect a consumer debt.

20
21 14. During this time, Defendant contacted Plaintiffs daily, sometimes
22 calling them as frequently as four times a day.

23
24 15. When contacting Plaintiffs, Defendant would call at times when it
25 was inconvenient for them to receive collection calls, specifically calling after

1 9:00 p.m. on more than one occasion.

2 16. Not wanting to receive any further collection calls, Plaintiffs would
3 answer the phone and inform Defendant's collectors to stop calling them.
4

5 17. Defendant refused to update its records and/or remove Plaintiffs'
6 number from its call list in order to stop the calls. Rather, Defendant persisted in
7 calling, the only purpose for was to harass.
8

9 18. Additionally, Defendant did not appropriately identify itself as a debt
10 collector at the start of a conversation; rather, the collector began to speak when
11 the phone was answered, saying in a familiar tone such things as: "Stephen, are
12 you going to pay this today?"
13

14 19. The account Defendant was seeking to collect allegedly totaled
15 \$893.82, for credit card debt with a \$300.00 limit. At the time of last payment,
16 November 2012, a balance of only \$214.00 remained.
17

18 20. As such, upon information and belief, Defendant sought to collect an
19 amount greater than the amount of the debt, an amount not provided for under the
20 agreement creating the relationship between the parties.
21

22 21. Further, when Plaintiffs refused to pay, Defendant threatened to take
23 legal action against Mr. Cocking.

24 22. Upon information and belief, Defendant did not intend to take legal
25 action, as it was not authorized to take such action and legally could not take the

1 action it threatened.

2 23. Defendant made the threats to take legal action for the sole purpose to
3 intimidate, scare and intimidate Plaintiffs into making payment on an inflated
4 figure nearly four times the actual balance on account.
5

6 24. Further, even after speaking with Plaintiffs, Defendant's collectors
7 contacted Mr. Cocking's in-laws and claimed they were "looking for Stephen
8 Cocking" and "calling to collect" money, when, in fact, they had already spoken to
9 the debtor.
10

11 25. Defendant's calls to third-party family members were not placed to
12 secure location information, but rather to embarrass, abuse, and humiliate
13 Plaintiffs.
14

15 26. When calling Mr. Cocking's in-laws, Defendant called five (5) times
16 on the same day, and each disclosed that they were calling from "NCO Financial
17 Systems, Inc."
18

19 27. It was embarrassing and harassing to Plaintiffs to have information
20 about a debt disclosed to Mr. Cocking's in-laws, and Plaintiffs do not discuss their
21 personal finances with his in-laws.
22

23 28. Further, at no time did Plaintiffs give Defendant permission to
24 disclose information related to the alleged debt to any third party, including Mr.
25 Cocking's in-laws.

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES
ACT**

29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

COUNT I

30. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §§1692c(a)(1) and 1692c(b).

a. A debt collector violates §1692c(a)(1) of the FDCPA by communicating with a consumer in connection with the collection of any debt at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m., local time at the consumer's location.

b. A debt collector violates §1692c(b) of the FDCPA by communicating, in connection with the collection of a debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt

1 collector, without the prior consumer of the consumer given
2 directly to the debt collector.

- 3
4 c. Here, Defendant violated §§1692c(a)(1) and 1692c(b) of the
5 FDCPA by calling Plaintiffs after 9:00 p.m. and disclosing
6 information about the debt to a third party without having
7 received consent from Mr. Cocking.
8

9 **COUNT II**

10 31. Defendant's conduct, detailed in the preceding paragraphs, violated
11 15 U.S.C. §§1692d and 1692d(5).

- 12 a. Section 1692d of the FDCPA prohibits debt collectors from
13 engaging in any conduct the natural consequences of which is
14 to harass, oppress or abuse any person in connection with the
15 collection of a debt.
16
17 b. Section 1692d(5) of the FDCPA prohibits debt collectors from
18 causing a telephone to ring or engaging any person in telephone
19 conversation repeatedly or continuously with the intent to
20 annoy, abuse, or harass any person at the called number.
21
22 c. Defendant violated §§1692d and 1692d(5) of the FDCPA when
23 it caused Plaintiffs' telephone to ring every day, calling them
24 between one (1) to four (4) times each day, with the intent to
25

annoy, abuse and harass Plaintiffs.

COUNT III

32. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §§1692e, 1692e(2)(A) and 1692e(5).

- a. A debt collector violates §1692e of the FDCPA by using false, deceptive or misleading representations or means in connection with the collection of any debt.
- b. A debt collector violates §1692e(2)(A) of the FDCPA by falsely representing the character, amount or legal status of any debt.
- c. A debt collector violates §1692e(5) of the FDCPA by threatening to take any action that cannot legally be taken or that is not intended to be taken.
- d. Here, Defendant violated §§1692e, 1692e(2)(A) and 1692e(5) of the FDCPA by misrepresenting the amount of the alleged debt and threatening to take legal action when it did not intend and/or did not have legal authority to take the action it threatened.

COUNT IV

33. Defendant's conduct, detailed in the preceding paragraphs, violated 15

1 U.S.C. §§1692f and 1692f(1).

- 2 a. Section 1692f of the FDCPA prohibits a debt collector from
3 using unfair or unconscionable means to collect or attempt to
4 collect any debt.
5
6 b. A debt collector violates §1692f(1) of the FDCPA by collecting
7 an amount (including any interest, fee, charge, or expense
8 incidental to the principal obligation) unless such amount is
9 expressly authorized by the agreement creating the debt or
10 permitted by law.
11
12 c. Defendant violated §§1692f and 1692f(1) of the FDCPA when
13 it failed to update its records to stop calling Plaintiffs and
14 attempted to collect an amount different than what was
15 permitted under the agreement creating the debt.
16

17 WHEREFORE, Plaintiffs, STEPHEN and LISA COCKING, respectfully
18 pray for a judgment as follows:
19

- 20 a. All actual damages suffered pursuant to 15 U.S.C.
21 §1692k(a)(1);
22
23 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
24 pursuant to 15 U.S.C. §1692k(a)(2)(A);
25

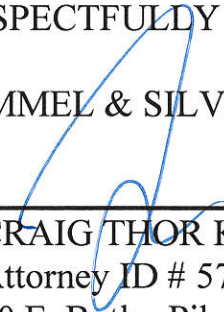
- 1 c. All reasonable attorneys' fees, witness fees, court costs and
2 other litigation costs incurred by Plaintiffs pursuant to 15
3 U.S.C. §1693k(a)(3); and
4
5 d. Any other relief deemed appropriate by this Honorable Court.

6 **DEMAND FOR JURY TRIAL**

7 PLEASE TAKE NOTICE that Plaintiffs, STEPHEN and LISA COCKING,
8 demand a jury trial in this case.
9

10
11 DATED: 04/30/13

RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C.

12 By: 
13 CRAIG THOR KIMMEL
14 Attorney ID # 57100
15 30 E. Butler Pike
16 Ambler, PA 19002
17 Phone: (215) 540-8888 ext. 103
18 Fax: (877) 788-2864
19 Email: kimmel@creditlaw.com
20
21
22
23
24
25